

## Pension Benefit Guaranty Corporation

## § 4903.3

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AUTHORITY: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402—6.

SOURCE: 61 FR 34130, July 1, 1996, unless otherwise noted.

## Subpart A—General

### § 4903.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part contains definitions and general provisions applicable to debt collection generally.

(b) *Subpart B.* Subpart B of this part prescribes procedures for debt collection by administrative offset, as authorized by the Federal Claims Collection Act (31 U.S.C. 3716), and consistent with applicable provisions of the Federal Claims Collection Standards. These procedures apply when the PBGC determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited or when another agency seeks administrative offset against a payment to be made by the PBGC.

(c) *Subpart C.* Subpart C of this part prescribes procedures for debt collection by tax refund offset, as authorized by section 3720A of subchapter II, chapter 37 of title 31 of the United States Code (31 U.S.C. 3720A) and in accordance with applicable IRS regulations (26 CFR 301-6402.6), including a related procedure for disclosure to a consumer reporting agency. These procedures apply to determinations that a debt of at least \$25 is past-due and legally enforceable, to referrals by the PBGC of past-due, legally enforceable debts to

the IRS for offset, and to any subsequent corrections of information contained in such referrals.

### § 4903.2 General.

(a) Certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other federal statutes. When, and to the extent, such requirements apply to collection of a debt by the PBGC, PBGC activities will be consistent with such requirements, as well as with any other applicable requirements (see, e.g., parts 4003, 4007, and 4062 of this chapter).

(b)(1) The Executive Director of the PBGC has delegated to the Director of the Financial Operations Department primary responsibility for PBGC debt collection activities. This delegation includes responsibility for procedures implementing requirements prescribed under federal statutes other than ERISA, and for coordinating the activities of other PBGC departments with functional responsibilities for different types of claims.

(2) PBGC departments are responsible for ascertaining indebtedness and other aspects of agency collection activities within their areas of functional responsibility.

### § 4903.3 Definitions.

The following terms are defined in § 4001.2 of this chapter: IRS, PBGC, and person. In addition, for purposes of this part:

*Administrative offset* has the meaning set forth in 31 U.S.C. 3701(a)(1).

*Agency* means an executive or legislative agency (within the meaning of 31 U.S.C. 3701(a)(4)).

*Claim* and *debt*, as defined in the Federal Claims Collection Standards (4 CFR 101.2(a)), are used synonymously and interchangeably to refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

*Consumer reporting agency* has the meaning set forth in 31 U.S.C. 3701(a)(3).

*Federal Claims Collection Act* means the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

*Federal Claims Collection Standards* means 4 CFR parts 101 through 105, which are regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States that implement the Federal Claims Collection Act.

*Repayment agreement* means a written agreement by a debtor to repay a debt to the PBGC.

*Tax refund offset* means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a federal agency that has entered into an agreement with the IRS with regard to its participation in the tax refund offset program, pursuant to IRS regulations (26 CFR 301.6402–6).

## Subpart B—Administrative Offset

### § 4903.21 Application of Federal Claims Collection Standards.

The PBGC will determine the feasibility of collection by administrative offset, whether to accept a repayment agreement in lieu of offset, and how to apply amounts collected by administrative offset on multiple debts as provided in the Federal Claims Collection Standards (4 CFR 102.3).

(a) *Feasibility.* The PBGC will determine whether collection by administrative offset is feasible on a case-by-case basis in the exercise of sound discretion. In making such determinations, the PBGC will consider:

(1) Whether administrative offset can be accomplished, both practically and legally;

(2) Whether administrative offset is best suited to further and protect all governmental interests;

(3) In appropriate circumstances, the debtor's financial condition; and

(4) Whether offset would tend to interfere substantially with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(b) *Repayment agreements.* The PBGC will exercise its discretion in determining whether to accept a repayment agreement in lieu of offset, balancing

the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent (within the meaning of 4 CFR 101.2(b)) and the debtor has not disputed its existence or amount, the PBGC will accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Multiple debts.* When the PBGC collects multiple debts by administrative offset, it will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

### § 4903.22 Administrative offset procedures.

(a) *General.* Except as otherwise required by law or as provided in paragraph (e) of this section, the PBGC will not effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures specified in paragraphs (b) and (c) of this section. However, the PBGC will not duplicate any notice or other procedural protection it previously provided in connection with the same debt under some other statutory or regulatory authority, such as part 4003 of this chapter.

(b) *Notice.* The PBGC will provide written notice informing the debtor of the following:

(1) The nature and amount of the debt, and the PBGC's intention to collect by offset;

(2) That the debtor may inspect and copy PBGC records pertaining to the debt in accordance with part 4901 or part 4902 of this chapter, as applicable (access under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), respectively);

(3) How and from whom the debtor may obtain administrative review of a determination of indebtedness;

(4) The facts and circumstances that the PBGC will consider in determining whether to accept a repayment agreement in lieu of offset; and

(5) If the PBGC has not previously demanded payment of the debt, the date